



Hamilton County Board of Commissioners

RESOLUTION

No. 1108-23

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE SCENIC INDUSTRIES, LLC, PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA, AND TO AUTHORIZE THE COUNTY MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.

WHEREAS, pursuant to Tennessee Code Annotated, Section 7-53-305(b) the Hamilton County Commission (the "Commission") is permitted to delegate to The Industrial Development Board of the City of Chattanooga (the "Board") the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees of the Board upon a finding by the County that such payments are deemed to be in furtherance of the Board's public purposes; and,

WHEREAS, Scenic Industries, LLC ("Scenic Industries") is contemplating the expansion and relocation of Scenic Industries' tooling and machining manufacturing facility in the County (the "Project"), and because of the substantial economic benefits to the City of Chattanooga and Hamilton County resulting from the Project has asked the Board and the County to approve payments in lieu of ad valorem taxes; and

WHEREAS, Scenic Industries plans to own the personal property portion of the Project; and

WHEREAS, Southern Legacy Group, LLC ("Southern Legacy"), an affiliate of Scenic Industries, plans to own the real property portion of the Project (Scenic Industries and Southern Legacy are hereinafter referred to as the "Companies"); and

WHEREAS, the Commission has determined that payments in lieu of ad valorem taxes from such a project would be in furtherance of the Board's public purposes as set forth within Chapter 53 of Title 7 of the Tennessee Code Annotated.



Resolution No. 1108-23
November 5, 2008

NOW, THEREFORE, BE IT RESOLVED BY THIS COMMISSION:

That we do hereby find that the Project is in the best interest of the County, and that payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Board's public purposes; and,

That, having made such a finding in this instance, we do hereby delegate to the Board the authority to negotiate and accept payments in lieu of ad valorem taxes from the Companies, it being further noted that this delegation is for this purpose and this project only; and,

That the County Mayor is hereby authorized to enter into an Agreement for Payments In Lieu Of Ad Valorem Taxes in the form attached hereto, with such changes thereto as he shall approve; and,

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

MB: 339
PAGE: 306

Approved: ☒

CERTIFICATION OF ACTION

Rejected: ☐


County Clerk

Approved: ☒


County Mayor

November 5, 2008

Vetoed: ☐

Date



**AGREEMENT FOR PAYMENTS IN LIEU
OF AD VALOREM TAXES**

THIS AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES (this "Agreement") is made and entered into as of this the ____ day of _____, 2008, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA** (the "Board"); **SCENIC INDUSTRIES, LLC**, a Tennessee limited liability company ("Scenic Industries"); **SOUTHERN LEGACY GROUP, LLC**, a Tennessee limited liability company ("Southern Legacy" and together with Scenic Industries, the "Companies"); the **CITY OF CHATTANOOGA, TENNESSEE** (the "City"); and **HAMILTON COUNTY, TENNESSEE** (the "County") and is joined in, for purposes of evidencing their acceptance of the agency relationship established herein, by **CARL E. LEVI and his successors, acting in the capacity of HAMILTON COUNTY TRUSTEE** ("Trustee"), and by **WILLIAM C. BENNETT and his successors, acting in the capacity of HAMILTON COUNTY ASSESSOR OF PROPERTY** ("Assessor").

WITNESSETH:

WHEREAS, the Companies are contemplating (i) the acquisition of certain property in Chattanooga, Hamilton County, Tennessee, more particularly described on Exhibit A attached hereto and incorporated herein (the "Land"), including an existing building located thereon (the "Existing Building"), (ii) the renovation of the Existing Building (such real property improvements to the Existing Building are hereinafter referred to as the "Existing Building Improvements"), located thereon, (iii) the construction of an additional facility (the "New Building"), (iv) the construction of certain real property improvements on the Land (the "Land Improvements"), and (v) the acquisition of certain machinery, equipment and other personal property more particularly described on Exhibit B attached hereto and incorporated herein (the "Personal Property") for use as a tooling and machining manufacturing facility (the "Project"), resulting in a personal property investment of approximately \$4,000,000, a real property

investment of approximately \$2,400,000 and the creation of 100 jobs over a three-year period ending December 31, 2011, which jobs shall have an average annual wage (excluding benefits) equal to at least \$43,680 (collectively, the "PILOT Projections"), and have requested the Board's assistance with the financing of the Project; and

WHEREAS, substantial economic benefits to the City and County economies will be derived from the Project; and

WHEREAS, the Board has agreed to take title to the Land, the Existing Building, the Building Improvements, the New Building and the Land Improvements (collectively, the "Real Property"), and to the Personal Property which Real Property and Personal Property, together with all additions thereto, replacements thereof and substitutions therefore (collectively, the "Property") is to be owned by the Board and leased to the Companies pursuant to a Lease Agreement of even date herewith (the "Lease") between the Board and the Companies; and

WHEREAS, the Board shall lease the Real Property to Southern legacy for sublease to Scenic Industries; and

WHEREAS, the Board shall lease the Personal Property to Scenic Industries; and

WHEREAS, because the Property is to be owned by the Board, which is a public corporation organized under the provisions of Tennessee Code Annotated, § 7-53-101, et seq., all such property will be exempt from all ad valorem property taxes ("property taxes") normally paid to the City and to the County, so long as the Property is owned by the Board, pursuant to the provisions of Tennessee Code Annotated, § 7-53-305, provided, however, that the Companies acknowledge and agree that the Land and the Existing Building (collectively, the "Non-Abated Property") shall receive no reduction of property taxes and the Companies shall pay In Lieu Payments (defined herein) equal to the property taxes otherwise due thereon; and

WHEREAS, for the public benefit of the citizens of the City and the County, the Board has requested that the Companies make certain payments to the Board in lieu of the payment of property taxes that would otherwise be payable on the Property; and

WHEREAS, the Companies have agreed to make such payments to the Board in lieu of the property taxes otherwise payable on the Property (the "In Lieu Payments"), as more particularly set forth hereinafter; and

WHEREAS, the Board has been authorized to receive the In Lieu Payments in lieu of property taxes by resolutions adopted by the City and the County, acting through their duly elected Council and Commission, respectively, which resolutions delegate to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions, including, without limitation, the requirement that the Board collect and expend such payments in furtherance of the public purposes for which the Board was created; and

WHEREAS, the Companies and the Board have agreed that all In Lieu Payments made to the Board by the Companies shall be paid to the Trustee, who shall disburse such amounts to the general funds of the City and the County in accordance with the requirements specified herein; and

WHEREAS, the Board wishes to designate the Assessor as its agent to appraise the Property and to assess a percentage of its value in the manner specified herein; and

WHEREAS, the Board wishes to designate the Trustee as its agent to receive the In Lieu Payments in accordance with the terms of this Agreement;

NOW, THEREFORE, IN CONSIDERATION OF the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. Designation of Assessor; Appraisal and Assessment of Property. The Board hereby designates the Assessor as its agent to appraise and assess the Property. The Assessor shall appraise and assess the Property in accordance with the Constitution and laws of the State of Tennessee as though the Property were subject to property taxes. The Assessor shall give the Trustee, the City Treasurer, the Board, and the Companies written notice of any changes in appraisals of the Property in the same manner that notices are given to owners of taxable property. The Assessor shall make available to the Board and the Companies all records relating to the appraisal and assessment of the Property.

2. Designation of Trustee; Computation and Billing of Payments In Lieu of Taxes. The Board hereby designates the Trustee as its agent to compute the amounts of the In Lieu Payments, to receive such payments from the Companies and to disburse such payments to the City and the County. On or about October 1 of each year during the term of this Agreement, the Trustee shall compute the taxes which would be payable on the Property as if it were subject to property taxes, in accordance with the Constitution and laws of the State of Tennessee and in accordance with the appraisal and assessment of the Assessor. Each year hereunder, the Trustee shall send the Board and the Companies a bill for the appropriate amount of In Lieu Payments (the "Tax Bill").

3. Payments in Lieu of Taxes. After receipt of the Tax Bill, the Companies shall pay to the Trustee the amount indicated on the Tax Bill in accordance with the amounts set forth below in Paragraph 4. The In Lieu Payments shall be made by the Companies in lieu of the property taxes which would otherwise be payable on the Property if it were subject to property taxes.

4. Amount of Payments by the Companies. For any period hereunder occurring before January 1, 2009 or after December 31, 2014, and during which the Property is owned by the Board, the Companies shall make In Lieu Payments in an amount, as determined by the Assessor and the Trustee, equal to one hundred percent (100%) of the amount of taxes that would have been payable on the Property as if it were subject to property taxes. For each of the years 2009 through 2014, the Companies shall make In Lieu Payments in an amount determined by the Assessor and the Trustee equal to the following percentages of the taxes that would have been payable on the New Building, the Building Improvements, the Land Improvements and the Personal Property (collectively, the "Abated Property") if it were subject to property taxes for the respective years shown:

<u>Years</u>	<u>Percentages</u>
2009	29.2%
2010	29.2%
2011	29.2%
2012	29.2%
2013	29.2%
2014	29.2%

In addition to the foregoing, during years 2009 through 2014, the Companies shall make In lieu Payments in an amount equal to one hundred percent (100%) of taxes that would have been payable on the Non-Abated Property as if it were subject to property taxes. The parties acknowledge that the amount of real and personal property taxes to support County schools currently represents twenty-nine and two-tenths percent (29.2%) of the total amount of the real and personal property taxes that would have been payable on the Abated Property if the Abated Property were subject to real and personal property taxes and further acknowledge that one hundred percent (100%) of such In Lieu Payments for years 2009 through 2014 shall be directed by the Trustee to support the County school system.

5. Penalties and Late Charges. The Companies shall make the In Lieu Payments for each year before March 1 of the following year. Except as otherwise provided in Paragraph 19, all In Lieu Payments shall be subject to penalties, late charges, fees and interest charges as follows:

(a) If the Companies fail to make any In Lieu Payment when due, and such failure to pay shall continue and not be fully paid within thirty (30) days after written notice of such non-payment has been provided, then a late charge shall be charged and shall also be immediately due and payable. The late charge shall be in the amount of one and one-half percent (1.5%) of the owed amount, for each month that each payment has been unpaid. Such one and

one-half percent (1.5%) per month late charge amount shall accumulate each month and be payable so long as there remains any outstanding unpaid amount.

(b) If the Companies should fail to pay all amounts and late charges due as provided hereinabove, then the Board, the City or the County may bring suit in the Chancery Court of Hamilton County to seek to recover the In Lieu Payments due, late charges, expenses and costs of collection in addition to reasonable attorneys' fees.

6. PILOT Projections Reporting.

(a) In order to determine the extent to which the Companies achieve the PILOT Projections upon which the In Lieu Payments have been calculated, the Companies shall complete and deliver for each calendar year during the term of this Agreement an Annual Report in the form attached hereto as Exhibit "C" commencing after completion of the first full calendar year during which In Lieu Payments were paid by the Companies.

(b) If the Companies collectively fail to achieve the PILOT Projections, then the City and the County reserve the right to terminate the benefits of this Agreement for any years remaining hereunder.

(c) If the Companies close the Project or move the Project from the County during the term hereof, the City and the County reserve the right to require the partial repayment of amounts that would have been payable on the Project as if it were subject to property taxes.

7. Disbursements by Trustee. All sums received by the Trustee pursuant to Paragraph 3 hereof shall be disbursed to the general funds of the City and the County in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All sums received shall be divided into two (2) accounts; one for the use and benefit of the City and the other for the use and benefit of the County. The account for the use and benefit of the City shall

be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the City, and the account for the use and benefit of the County shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the County. All disbursements to the general funds of the City and County shall be made by the Trustee subject to the requirement that all funds disbursed may be used by the City and the County only in furtherance of the public purposes of the Board, as described in Tennessee Code Annotated § 7-53-102.

8. Contest by the Companies. The Companies shall have the right to contest the appraisal or assessment of the Property by the Assessor and the computation by the Trustee of the amount of the In Lieu Payments. If the Companies contest any such appraisal or assessment, then they shall present evidence to the Assessor in favor of their position. Likewise, if the Companies contest any such computation, they shall present evidence to the Trustee in favor of their position. If the In Lieu Payments being contested shall be or become due and payable, the Companies shall make such payments under protest. The Companies and the Assessor or the Trustee, as the case may be, shall negotiate in good faith to resolve any disputes as to appraisal, assessment or computation. If the Companies and the Assessor or the Trustee are unable to resolve a dispute, then the Companies may file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement, including those covering appraisal, assessment and computation, be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

9. Lien on Property. Any amounts which remain payable under this Agreement shall become a lien on the Property, and such lien shall be enforceable against the Property in the event that any payment owing hereunder is not timely made in accordance with this Agreement.

10. Term. This Agreement shall become effective on the date that the Board attains title to the Property and shall continue for so long as the Board holds title to any of the

Property or the Companies have made all payments required hereunder, whichever shall later occur.

11. Leasehold Taxation. If the leasehold interest of the Companies should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder.

12. Notices, etc. All notices and other communications provided for hereunder shall be written, and mailed via registered or certified mail or delivered via overnight express carrier, to the following addresses:

If to the City:	Mr. Randall L. Nelson City Attorney Suite 400, Pioneer Bank Building Chattanooga, Tennessee 37402
If to the County:	Mr. Rheubin M. Taylor County Attorney Room 204 County Courthouse Chattanooga, Tennessee 37402
If to Scenic Industries:	Scenic Industries, LLC 946 Business Park Drive Chattanooga, Tennessee 37419 Attention: Mr. Dennis Roach
If to Southern Legacy:	Southern Legacy Group, LLC 946 Business Park Drive Chattanooga, Tennessee 37419 Attention: Mr. Dennis Roach
With a Copy to:	Brian L. Eftink, Esq. Miller & Martin PLLC Suite 1000, Volunteer Building 832 Georgia Avenue Chattanooga, Tennessee 37402-2289
If to the Trustee:	Trustee Hamilton County Courthouse Chattanooga, Tennessee 37402

If to the Assessor:	Assessor
---------------------	----------

Hamilton County Courthouse
Chattanooga, Tennessee 37402

or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties. All such notices and communications shall be deemed delivered as follows: (i) when mailed via overnight courier service, one business day after mailing, and (ii) when depositing in the United States mail by registered or certified mail, postage prepaid, return receipt requested, three days after deposit.

13. No Waiver; Remedies. No failure on the part of any party hereto, and no delay in exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

14. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court or jurisdiction, the invalidity of any such clause or provision shall not affect any of the remaining provisions of this Agreement.

15. No Liability of Board's Officers. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, member, director or officer, as such, of the Board, whether past, present or future, either directly or through the Board. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer, as such, is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

16. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties and signatories hereto and to their respective successors and assigns.

17. Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

18. Amendments. This Agreement may be amended only in writing, signed by each of the parties hereto, except that the Trustee and the Assessor shall not be required to join in amendments unless such amendments affect their respective duties hereunder.

19. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

ATTEST:

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF CHATTANOOGA**

By: _____
Secretary

By: _____
Chairman

SCENIC INDUSTRIES, LLC

By: _____

Print Name: _____

Title: _____

SOUTHERN LEGACY GROUP, LLC

By: _____

Print Name: _____

Title: _____

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Mayor

HAMILTON COUNTY, TENNESSEE

By: _____
County Mayor

CARL E. LEVI

By: _____
Hamilton County Trustee

WILLIAM C. BENNETT

By: _____
Hamilton County Assessor of Property

EXHIBIT A

LAND

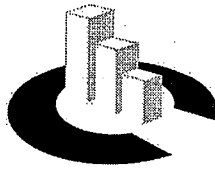
The following described real estate located in Hamilton County, Tennessee:

EXHIBIT B

PERSONAL PROPERTY

All machinery, equipment and other tangible personal property that is located on or about the real property described in the foregoing Exhibit A during the period between _____, 2007, and December 31, 2010, (together with additions thereto, replacements thereof, and substitutions therefor) in connection with a tooling and machining manufacturing facility located on such real property; provided, however, the foregoing description shall exclude any tangible personal property of Seller that was subject to ad valorem property taxes within Hamilton County, Tennessee prior to _____, 2007.

EXHIBIT "C"



CHATTANOOGA
AREA CHAMBER OF COMMERCE

**Annual Report for Payment-In-Lieu-of-Tax (PILOT) Program for
Chattanooga and Hamilton County Tennessee**

Company Information

Name: _____

Address: _____

City and Zip: _____

Company Contact: _____

Telephone: _____

E-mail: _____

Fax: _____

Company's Commitment (commitment agreement attached)

Real Property Investment Amount: _____

Personal Property Investment Amount: _____

Number of Net New Jobs: _____

Average Wages per New Job: _____

Capital Investment as of December 31, 20

Real Property Investment Amount: _____

Personal Property Investment Amount: _____

